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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,299	08/03/2001	Thomas F. Egan	ACCESS-005XX	5645

7590 03/14/2003

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,299

Applicant(s)

EGAN, THOMAS F.

Examiner

Katherine W Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

R sponse to Amendment/Objection to the Specification

The amendment filed 2/12/2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Examiner can find no reference to the center of gravity limitation and 1st and 2nd vertical portions of the support and handle assembly in new claim 5 in the originally filed application. The only reference to stability at all is:

"It should be noted that lift support pin assembly 34 comprises a motion-limiting collar which prevents lifting and transferring apparatus 11 from undesirable sideward rotation and, thus, risk of tipping when the lift rotates to such position that the load center is outside the support base of portable support apparatus 10."

which examiner does not consider as disclosing the subject matter in new claim 5, as no structure or center of gravity relationship is disclosed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

1. The corrected or substitute drawings were received on 2/12/2003. These drawings are accepted and approved.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 5-7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner can find no reference to the center of gravity and structure of claim 5's limitation in the originally filed application. Examiner is examining it as best understood, subject to applicant's verification that the claimed limitations were disclosed. Claims 6-7 are rejected as depending from claim 5.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costello US Patent 5502851 in view of Tsuga US Patent 6260218. Costello teaches a main cross member (18) with a first and second end (Fig. 3), a first leg (16) and a second leg (also labeled 16, Fig. 3) each having a first end and a second end (Figs. 3- 5), the first leg pivoting at a first end about a vertical axis at the first end of the main cross member and the second leg pivoting at a first end about a vertical axis at the second end of the main cross member (37,38 Fig 1, col 3 line 53-col 4 line 9), a plurality

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of caster assemblies (27, Fig. 1 and 4) attached to the first and second ends of the first and second legs, each pivoting about a vertical axis (col 3 lines 39-41), and a support and handle assembly (40,41, Fig 1). However, Costello does not teach that the vertical support and handle assembly is attached to the main cross member via hinge means for pivoting {about} a substantially horizontal axis between a substantially vertical position and a substantially horizontal position. Tsuga teaches a portable support apparatus with a vertical support (5) and handle (91) assembly attached to the main cross member (42) via hinge means for pivoting about a substantially horizontal axis in Figs. 1 and 9. Examiner notes that the vertical support and handle assembly of Tsuga is attached to a bracket connecting the base legs 1, 2, and 3 to main cross member (42); however, the foldable function is the same and applicant has not recited that the support is connected *directly* to the main cross member with a hinge means. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include a hinged, foldable support and handle assembly in view of Tsuga in order to allow the lift to be folded to a small dimension for transport or storage as discussed by Tsuga in the abstract and col 2 lines 1-6.

Re claim 2: Costello teaches that the first and second legs are limited in their motion by two locking pins and detent holes (26, fully described on col 3 lines 22-37). (Examiner notes that Tsuga also teaches that the 1st and 2nd legs (1,2,) are limited in their motion by a pair of locking pins (22, 22) and detent holes in Fig 2 and 3) formed in the 1st and 2nd legs and the main cross member (42).)

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Re claim 3: Were the support and handles assembly of Costello modified as taught by Tsuga to be folded, col 3 lines 53- col 4 line 9 disclose that a portion of the handle assembly would engage the 1st and 2nd legs when folded, as the folded apparatus of Tsuga has the support engaging legs when folded in Fig. 9. and the purpose of folding is to achieve a small dimension for easy transport. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include a hinged, foldable support and handle engageable with the first and second legs as taught by Tsuga in order to allow the lift to be folded to a small dimension for transport or storage as discussed by Tsuga in the abstract and col 2 lines 1-6.

Re claims 4 and 8: The support and handle assembly comprises mounting pins (77,78,79) suitable for attachment of lifting means as shown by Tsuga in Fig 1 and 10 and discussed in col 6 lines 11-26. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have made the hooks vertically adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include the support and handle assembly comprising mounting pins suitable for attachment of lifting means as taught by Tsuga in order to allow easy and flexible connection of suspenders for suspending handicapped persons as discussed by Tsuga in col 8 lines 15-25 and col 6 lines 11-26.

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Re claim 5: Costello shows a support handle assembly such that the lifting means (attaches to 70) would have a center of gravity coinciding with a central point of the plurality of casters.

Re claims 9-10: Costello in view of Tsuga as applied to claim 1, teach all the elements except a locking means for the support relative to the main cross member or base. Costello is obviously locked as it is fixed. Tsuga teaches such locking means in col 4 lines 46-64 and discusses the importance in ensuring safety by not collapsing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include a locking means for the support relative to the main cross member or base as taught by Tsuga in order to ensure safety. Figs. 4-5 show a locking pin and blade arrangement.

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costello US Patent 5502851 in view of Tsuga US Patent 6260218 as applied to claim 5 above and further in view of Ezenwa US Patent 5193633. Costello US Patent 5502851 in view of Tsuga US Patent 6260218 as applied to claim 5 above teach all the elements except a motion limiting assembly and electrical interlock switch to prevent the center of gravity from shifting too far from the central point of the casters. Ezenwa teaches in col 9 lines 20-62 a motion limiting assembly and electrical interlock switches for stability and to prevent patient lifting devices from shifting off center. Examiner notes that the exact structure is different, as the assembly is a different design, but the teaching of Ezenwa would have made it obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello US Patent 5502851 in view of Tsuga US

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Patent 6260218 as applied to claim 5 above to include a motion limiting assembly and electrical interlock switches as taught by Ezenwa in order to prevent patient lifting devices from shifting off center and ensure safety and stability.

Response to Arguments

7. Applicant's arguments filed 2/12/2003 have been fully considered but they are not persuasive. The motivation to combine is found in the secondary reference as noted in the office action, and does not need to be in the primary reference. Tsuga specifically teaches and allows for folding to enhance easy transport and stowage in the abstract and col 2 lines 1-6.

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., directly connected or the support and base each fixedly connected to a portion of the hinge means) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Tsuga teaches that the support 5 is attached to the frame via the hinge bracket such that it can move between a horizontal and vertical position in Figs 1 and 9.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Tues-Fri 9 AM - 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-308-8623 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

kwm
March 6, 2003


J. J. SWANN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600